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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 3, 2002

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUA020002

and

DOMINION NUCLEAR MARKETING II, INC.,  
PLEASANTS ENERGY, LLC, ARMSTRONG  
ENERGY LIMITED PARTNERSHIP, L.L.L.P., and  
TROY ENERGY, LLC

For approval of changes to wholesale power service agreements under Chapter 4 of Title 56 of the Code of Virginia and for an exemption of new wholesale power service agreements from the prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, for approval of wholesale power service agreements and for expedited consideration

ORDER PERMITTING WRITTEN COMMENTS

On January 23, 2002, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company"), Pleasants Energy, LLC ("Pleasants"), Armstrong Energy Limited Partnership, L.L.L.P. ("Armstrong"), Troy Energy, LLC ("Troy") (Pleasants, Armstrong, and Troy are hereinafter referenced as the "Project Entities"), and Dominion Nuclear Marketing II, Inc. ("DNM II") (collectively, "Petitioners") filed a petition with the State Corporation Commission for expedited consideration and for approval of certain changes to the existing service arrangements and agreements between Dominion Virginia Power and DNM II and for approval of changes in previously approved agreements between

Dominion Virginia Power and two of the Project Entities. In addition, Dominion Virginia Power and the Project Entities requested an exemption from the prior approval requirement of Chapter 4 of Title 56 of the Code of Virginia ("Chapter 4") or, in the alternative, for approval of new service agreements between Dominion Virginia Power and each of the Project Entities. On February 15, 2002, Dominion Virginia Power filed revisions to the service agreements with the Project Entities to clarify pricing requirements by the Federal Energy Regulatory Commission.

On March 5, 2002, the Commission issued its Order Granting Approval in this case. On March 25, 2002, the Petitioners filed with the Commission a Motion to Amend Petition and Order ("Motion"). The Petitioners moved the Commission to allow the petition to be amended as requested in the Motion, and to enter an amended order making certain determinations under Section 32 of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C.A. § 79z-5a (1997), involving exempt wholesale generators ("EWG"). The Petitioners had not previously requested the Commission to make any determinations under PUHCA in this proceeding.

Petitioners stated that "[b]ecause each of DNM II and the Project Entities are EWG affiliates of Dominion Virginia Power pursuant to Section 32(k) of PUHCA, the Petitioners cannot enter into the wholesale power agreements until this Commission and the North Carolina Utilities Commission ("NCUC") make, with regard to each agreement, (a) a determination that it has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under PUHCA § 32(k)(2)(A), 15 U.S.C.A. § 79z-5a(k)(2) and (b) a determination that the transaction (i) will benefit consumers; (ii) does not violate any state law (including where applicable, least cost planning); (iii) would not provide the

EWG any unfair competitive advantage by virtue of its affiliation or association with Dominion Virginia Power; and (iv) is in the public interest." (Motion at 3.)

Petitioners also stated that: (1) the Commission has ruled that the wholesale power agreements are in the public interest; (2) the agreements include compensation provisions and access to additional power for resale or system supply, which benefit the Company and its customers; (3) also included are limitations on prices that can be charged to the Company and provisions for record keeping by the Petitioners; (4) the Commission has required record keeping and reserved the authority to examine the books and records of the Company's affiliates; (5) the Commission clearly has sufficient regulatory authority to exercise its duties; (6) the affiliated EWG's have no unfair competitive advantage "because any transactions pursuant to Dominion Virginia Power's agreement with DNM II and the agreements upon commercial operation of the Project Entities are voluntary in nature and the prices which are allowed to be charged Dominion Virginia Power can be no higher than market prices"; and (7) the transactions, and the Company's continued participation in the wholesale power agreements, are subject to Codes of Conduct and continuing regulatory oversight. (Motion at 3-4.)

On March 26, 2002, the Commission issued an Order Granting Reconsideration and Suspending Order Granting Approval. In that order, the Commission: (1) found that the petition should be amended as set forth in the Motion; (2) found that to amend the Order Granting Approval as requested by Petitioners, we must reconsider that order; (3) treated Petitioners' Motion as a petition for reconsideration pursuant to Rule 5 VAC 5-20-220 of the Commission's Rules of Practice and Procedure, and granted the petition for reconsideration; and (4) suspended the Order Granting Approval of March 5, 2002, pending the Commission's reconsideration.

NOW THE COMMISSION, having considered the amended petition, finds that we should permit written comments thereon as set forth herein. We previously granted approval of the revised agreements under Chapter 4. We are now asked, however, to make specific findings under PUHCA, as discussed above. Accordingly, we think it is appropriate to permit comments from interested persons on Petitioners' requested PUHCA determinations before ruling on this matter.

IT IS ORDERED THAT:

(1) On or before May 6, 2002, any interested person wishing to comment on Petitioners' amended petition shall file an original and fifteen (15) copies of such written comments to: Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia, 23218-2118, and shall refer to Case No. PUA020002. A copy of such comments shall simultaneously be sent to counsel for Petitioners, James C. Dimitri, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia, 23219.

(2) On or before May 13, 2002, the Commission Staff shall review the amended petition and file a report with the Commission presenting its findings and recommendations.

(3) On or before May 20, 2002, the Petitioners shall file with the Clerk of the Commission at the address set forth above any response to the Staff report or previously filed comments.

(4) On or before April 15, 2002, the Petitioners shall complete publication of the following notice to be published on one (1) occasion as classified advertising in newspapers having general circulation throughout the Applicant's proposed service territory:

NOTICE TO THE PUBLIC OF A PETITION BY VIRGINIA  
ELECTRIC AND POWER COMPANY AND AFFILIATED  
COMPANIES FOR FINDINGS UNDER THE PUBLIC UTILITY  
HOLDING COMPANY ACT OF 1935

On January 23, 2002, Virginia Electric and Power Company ("Dominion Virginia Power"), Pleasants Energy, LLC ("Pleasants"), Armstrong Energy Limited Partnership, L.L.L.P. ("Armstrong"), Troy Energy, LLC ("Troy") (Pleasants, Armstrong, and Troy are hereinafter referenced as the "Project Entities"), and Dominion Nuclear Marketing II, Inc. ("DNM II") (collectively, "Petitioners") filed a petition with the State Corporation Commission ("Commission") for expedited consideration and for approval of certain changes to the existing service arrangements and agreements between Dominion Virginia Power and DNM II and for approval of changes in previously approved agreements between Dominion Virginia Power and two of the Project Entities. In addition, Dominion Virginia Power and the Project Entities requested an exemption from the prior approval requirement of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, for approval of new service agreements between Dominion Virginia Power and each of the Project Entities.

On March 5, 2002, the Commission issued its Order Granting Approval to Petitioners' request. On March 25, 2002, the Petitioners filed with the Commission a Motion to Amend Petition and Order. The Petitioners requested the Commission to enter an amended order making certain determinations under Section 32 of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C.A. § 79z-5a (1997), involving exempt wholesale generators ("EWG"). Petitioners requested the Commission to make, "with regard to each agreement, (a) a determination that it has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under PUHCA § 32(k)(2)(A), 15 U.S.C.A. § 79z-5a(k)(2) and (b) a determination that the transaction (i) will benefit consumers; (ii) does not violate any state law (including where applicable, least cost planning); (iii) would not provide the EWG any unfair competitive advantage by virtue of its affiliation or association with Dominion Virginia Power; and (iv) is in the public interest."

Any member of the public may obtain a free copy of Petitioners' request by contacting counsel for Petitioners, James C. Dimitri, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street,

Richmond, Virginia, 23219. The petitions and other papers filed in this docket also may be reviewed at the Commission's Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia. On or before May 6, 2002, any interested person wishing to comment on Petitioners' requested PUHCA determinations shall file an original and fifteen (15) copies of such written comments to: Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia, 23218-2118, and shall refer to Case No. PUA020002. A copy of such comments shall simultaneously be sent to counsel for Petitioners at the above address.

(5) This matter is continued generally until further order of the Commission.